

# Arizona Criminal Justice Commission



## Statistical Analysis Center Publication

*Our mission is to sustain and enhance the coordination, cohesiveness, productivity and effectiveness of the Criminal Justice System in Arizona*

# ***The Reporting of Sexual Assault in Arizona, CY 2008-2009***

April

# 2011

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## Executive Summary

Arizona Revised Statute (A.R.S.) 41-2406.B, which became law in July 2005, requires the Arizona Criminal Justice Commission (ACJC) to maintain information retrieved from disposition reporting forms submitted to the Arizona Department of Public Safety (DPS) on sexual assault (A.R.S. 13-1406), sexual assault of a spouse (*previously repealed* A.R.S. 13-1406.01), and the false reporting of sexual assault involving a spouse (A.R.S. 13-2907.03). Utilizing these data, ACJC is mandated to provide an annual report summarizing this information to the governor, the president of the senate, the speaker of the house, the secretary of state, and the director of the Arizona state library, archives, and public records. According to statute, the report is to contain information from disposition reporting forms including the total number of police reports, charges, convictions, and sentences for sexual assault and the number of police reports, charges, convictions and sentences for sexual assault involving a spouse, including whether or not the victim and the victim's spouse were estranged at the time of the assault. Additionally, the report is to contain the number of charges, convictions, and sentences for false reporting of sexual assault involving a spouse. The arrest charges, convictions, and sentencing data come from an extract of the Arizona Computerized Criminal History (ACCH) record system provided by DPS to ACJC in January 2011. The ACCH repository is populated with arrest and disposition reporting form information submitted to DPS by local law enforcement, prosecuting attorneys, and the courts. This report focuses on data from calendar year 2009 and updates data reported in *The Reporting of Sexual Assault in Arizona: 2008* report.

### *Sexual Assault*

The sexual assault data found in this report were obtained from the arrest and disposition reports available in the ACCH as of January 2011. Arrest and subsequent disposition data for CY 2009 were given at least one year and no more than two years and one month for entry into the ACCH while CY 2008 and prior records were given three or more years for entry into the ACCH repository. As a result, data may be more complete for earlier years. Data for CY 2010 are not available because sufficient time did not transpire (at least 180 days for disposition finalization) for the completion and rendering of disposition charges.

In calendar year (CY) 2008, there were 286 arrests involving a sexual assault that included a total of 525 sexual assault arrest counts (one arrest report may include multiple arrest counts) appearing in the ACCH. Of these 525 sexual assault arrest counts, 129 convictions were obtained and 116 of the convictions were for the original charge of sexual assault. Three additional sexual assault convictions were obtained originating from arrest counts for crimes other than sexual assault. The sentences imposed on convicted sexual assault offenders include 106 convictions leading to a probation sentence, 61 convictions leading to prison or jail sentences, 60 convictions where sentences were suspended, six fines, five convictions leading to restitution orders, three convictions leading to community service sentences, and 36 convictions with "other" sentences.<sup>1</sup>

In CY 2009, there were 320 arrest reports involving sexual assault submitted and entered into ACCH, which included 703 counts of sexual assault. At the time the data was extracted from the

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<sup>1</sup> The ACCH repository maintains an "other" variable for disposition agencies to identify whether an additional form of sentencing was imposed.

ACCH, 175 convictions had been obtained and entered into ACCH, of which 160 were for the original charge of sexual assault. Four additional sexual assault convictions were reported in cases where the original arrest was for a crime other than sexual assault. The sentences received by offenders convicted of sexual assault consisted of 111 sentences to probation, 76 convictions where the sentence was suspended, 90 convictions with sentences to prison or jail, 26 convictions resulting in a fine, three convictions leading to orders for restitution, and 28 convictions with "other" sentences.

#### *False Reporting of Sexual Assault Involving a Spouse*

In CY 2005, the false reporting of a sexual assault involving a spouse (A.R.S. 13-2907.03) became a part of Arizona's criminal code. Even though false reporting of a sexual assault involving a spouse is now a specific crime in Arizona's criminal code, there were no charges of false reporting of sexual assault involving a spouse in the ACCH repository. It is important to note that the false reporting charge was a class one misdemeanor, which is not mandated for inclusion in the ACCH repository per A.R.S. 41-1750.

#### *Sexual Assault Involving a Spouse*

One of the reporting requirements of A.R.S. 41-2406.B is to provide the number of arrests, convictions, and number and types of sentences for cases involving the sexual assault of a spouse. In July 2005, Senate Bill 1040 repealed A.R.S. 13-1406.01, which allowed for an offender to be specifically charged with sexual assault involving a spouse. In the absence of a specific statute for sexual assault involving a spouse in Arizona's criminal code, the arrest and disposition reporting forms currently used do not contain the information necessary for ACJC to report all of the information required under A.R.S. 41-2406.B. Despite the discontinuation of A.R.S. 13-1406.01 as a criminal code, three cases of sexual assault of a spouse were reported in CY 2007 and 2008 using this repealed code. No cases were reported in CY 2009.

In addition to reporting information on sexual assault of a spouse, A.R.S. 41-2406.B also requires ACJC to report, in cases of sexual assaults involving a spouse, whether the victim and offender were estranged at the time of the offense. Except for a general indication of whether an offense involved domestic violence, there is no field on the disposition reporting form that describes the relationship between victim and offender or the status of the relationship at the time of the offense.

#### *Limitations of the Data*

Criminal history records that are created through the submission of arrest and disposition reporting forms continue to experience both improvement and ongoing challenges to criminal history record timeliness, accuracy, and completeness. For example, the percentage of arrest counts with disposition information in the ACCH by the end of the following calendar year improved from 64.3 percent of the total number of CY 2005 arrest counts in the ACCH by the end of CY 2006 to 69.6 percent of CY 2009 arrest counts entered in the ACCH by December 31, 2010. Despite the improvement, more than 30 percent of the arrest counts from CY2009 are missing disposition data in the ACCH at least one year after the arrest. As of 2010, the United States Department of Justice, Office of Justice Programs, through the Bureau of Justice Statistics, has invested more than \$545 million in the National Criminal History Improvement

Program (NCHIP) since its inception in 1995. ACJC, in conjunction with many state and local agencies throughout Arizona, continues to use NCHIP funding to improve the quality of criminal history records throughout the criminal justice process. Accurate and complete criminal history record information is important for assessing the functions of Arizona's criminal justice system, but more importantly, it is critical for effective criminal justice decision-making as well as for police officer and public safety.

## **Introduction**

Arizona Revised Statute (A.R.S.) 41-2406.B requires the Arizona Criminal Justice Commission (ACJC) to provide information from disposition reporting forms submitted to the Arizona Department of Public Safety (DPS) by Arizona criminal justice agencies on sexual assault and sexual assault involving a spouse pursuant to A.R.S. 13-1406 and false reporting of sexual assault involving a spouse pursuant to A.R.S. 13-2907.03. Additional data within the report is provided using the arrest forms submitted to the ACCH. The information is to include the number and types of arrest reports filed, the number and types of charges filed, the number of convictions that are obtained, and the number and types of sentences that result from the convictions. Pursuant to A.R.S. 41-2406.D, ACJC is also required to submit an annual report based on this information, the specific contents of which are described in A.R.S. 41-2406.B, to the governor, the president of the senate, and the speaker of the house. Additionally, a copy of the report is to be provided to the secretary of state and the director of the Arizona state library, archives, and public records.

The arrest and disposition reporting forms used by local, county and state criminal justice agencies to report arrests and subsequent criminal justice system activity do not contain all the information needed to meet the reporting requirements of A.R.S. 41-2406.B. For example, A.R.S. 13-1406.01, which was the specific offense statute for sexual assault involving a spouse, was removed from the criminal codes in 2005. Further, A.R.S. 13-2907.03, the specific criminal code for false reporting of sexual assault involving a spouse, is an offense for which submission to the criminal history repository is not required by A.R.S. 41-1750. Additionally, variation in the timeliness and completeness of the records in the Arizona Computerized Criminal History (ACCH) repository, which is populated with the information from the arrest and disposition forms submitted by local, county, state, tribal, and federal criminal justice agencies, presents obstacles in the effective reporting of criminal justice system activity throughout the state of Arizona.

Although the disposition reporting forms do not contain all of the information necessary to provide a complete and accurate reporting of sexual assault arrests and subsequent criminal justice system activity on an annual basis, for this report, ACJC provides the information that is available on the number of arrests for sexual assault, the number of arrest counts and offense types that are submitted, the number of conviction charges obtained, and the sentences imposed on convicted sexual assault offenders.

### *Reporting Requirements*

A.R.S. 41-2406.B requires DPS to provide to ACJC "each applicable disposition reporting form relating to sexual assaults pursuant to section 13-1406 and false reporting of sexual assault pursuant to section 13-2907.03..." In turn, A.R.S. 13-2406.B (1-4) requires ACJC to, "...maintain the following records regarding sexual assaults pursuant to section 13-1406 and false reporting of sexual assault pursuant to section 13-2907.03 that are submitted to the commission by the department of public safety: 1) The number of police reports that are filed; 2) The number of charges that are filed and what charges are filed; 3) The number of convictions that are obtained; 4) The sentences that are imposed for each conviction."

A.R.S. 41-2406 goes on to state that:

“...the records shall identify the total number of police reports, charges, convictions and sentences for all sexual assaults and the number of police reports, charges, convictions and sentences for those sexual assaults that involved a spouse. For those sexual assaults that involved a spouse, the report shall identify whether the victim and the victim’s spouse were estranged. The records shall also identify the total number of police reports, charges, convictions and sentences for all false reports that relate to sexual assault of a spouse pursuant to section 13-2907.03.”

Building on the previous year’s report, this report contains all available ACCH data on police reports (i.e. arrest reports), charges, convictions, and sentencing information for sexual assaults and the false reporting of sexual assault of a spouse that occurred in CY 2008 and 2009. The information in the ACCH replicates the information from the arrest and disposition reporting forms submitted by law enforcement, prosecutors, and the courts. The ACCH data used for this report were extracted by DPS at the beginning of January 2011.

## Sexual Assault Data, CY 2008 and CY 2009

This report explores the sexual assault arrest, conviction, and sentencing data from the ACCH for CY 2008 and CY 2009. The CY 2008 data in this report updates the CY 2008 data published in the 2008 report.<sup>2</sup> The data provided to ACJC was extracted from the ACCH in January 2011, giving all CY 2009 and prior arrest counts a processing time of at least one full year from arrest date to final disposition date. The CY 2008 data includes any information that was updated in the ACCH as of January 2011.

### *Sexual Assault Arrests*

According to arrest forms submitted to DPS in CY 2008, there were 286 arrests that included at least one count of sexual assault (Table 1). A total of 270 individuals accounted for the 286 arrests for sexual assault (16 individuals were arrested twice in CY 2008 on sexual assault charges).

The 270 individuals arrested in CY 2008 were charged with 525 counts of sexual assault. Of the 525 counts for sexual assault provided to DPS in CY 2008, 129 resulted in convictions. Of the 129 convictions obtained, 116 were for the original charge of sexual assault. The remaining 13 convictions recorded were for aggravated assault, kidnapping, sexual abuse, sexual conduct with a minor, child molestation, disorderly conduct, and child or vulnerable adult abuse. Of the 525 arrest counts for sexual assault, 134 did not have disposition data entered in the ACCH as of January 2011.

In CY 2009, there were 320 sexual assault arrests submitted to DPS that included one or more counts of sexual assault (Table 1). A total of 308 individuals were responsible for the 320 arrests for sexual assault (12 individuals were arrested twice on a sexual assault charge).

The 308 individuals arrested in CY 2009 accounted for 703 counts of sexual assault. Of the 703 counts for sexual assault, 175 counts led to convictions. A total of 160 of the convictions were for the original charge of sexual assault (Table 1). The other 15 convictions were for aggravated assault, kidnapping, sexual abuse, sexual conduct with a minor, molestation of a child, and child or vulnerable adult abuse. Of the 703 sexual assault arrest counts, approximately 31 percent (219) did not have corresponding disposition data by January 2011.

### *Uniform Crime Reporting Program*

According to the latest Uniform Crime Reporting (UCR) statistics released by the Federal Bureau of Investigation, the total number of forcible rapes reported to law enforcement in Arizona rose by 26.1 percent from CY 2008 to CY 2009.

A portion of the sexual assaults that occur in Arizona are reported as forcible rape to the UCR program. The increase in forcible rape reported in Arizona during CY 2009 may partially account for the increase in the number of sexual assault arrest counts reported in the ACCH repository during CY 2009.

<sup>2</sup> Arizona Criminal Justice Commission. "The Reporting of Sexual Assault in Arizona: 2008." 15 Mar. 2010. <[http://www.azcjc.gov/ACJC.Web/Pubs/Home/2009\\_ARS\\_41-2406\\_Report.pdf](http://www.azcjc.gov/ACJC.Web/Pubs/Home/2009_ARS_41-2406_Report.pdf)> 15 Feb. 2011.



<b>Table 1: Sexual Assault Arrests CY 2008-2009</b>		
	2008*	2009
Sexual Assault Arrests Submitted to DPS	286	320
Sexual Assault Arrest Counts	525	703
Sexual Assault Arrest Counts Leading to Convictions for Sexual Assault	116	160
Sexual Assault Arrest Counts Not Disposed in the ACCH ( <i>as of January 1, 2011</i> )	134	219

\* 2008 data includes one count of sexual assault involving a spouse.

### *Sexual Assault Involving a Spouse*

As of 2006, the Arizona Revised Statutes no longer include a specific charge for sexual assault involving a spouse. Thus, data is generally not available in the ACCH on sexual assaults involving a spouse. Despite the absence of a current statute, one CY 2008 arrest count was entered into ACCH using the repealed statute citation for sexual assault involving a spouse. The CY 2008 sexual assault arrest and conviction data in this report include the arrest for sexual assault involving a spouse.

### *False Reporting of Sexual Assault Involving a Spouse*

During CY 2008 and CY 2009, there were no charges of false reporting of sexual assault involving a spouse. The charge of false reporting of sexual assault involving a spouse (A.R.S. 13-2907.03) is a class one misdemeanor and A.R.S. 41-1750 does not require this specific misdemeanor offense to be entered into the ACCH repository. Therefore, the absence of arrest or disposition information on false reporting of a sexual assault involving a spouse in the ACCH does not necessarily reflect that no arrests for this offense took place during CY 2008 or 2009.

### *Sexual Assault and Domestic Violence*

Although little data is available for sexual assaults involving a spouse, to better understand criminal justice processing of sexual assault cases that occurs in the context of a relationship, this section reviews sexual assault arrests that were flagged for domestic violence. Domestic violence is not an official statutory offense; rather, an offender is charged with an eligible domestic violence offense (e.g., sexual assault, aggravated assault, etc.) and the arrest record is flagged for domestic violence. The domestic violence flag subsequently impacts the court's decision at sentencing. It is important to note that Arizona, like all other states, defines domestic offenses as those that occur in many relationship contexts, including marriage, but also dating, family, and co-habiting relationships.<sup>3</sup> The data in Table 2 explores the number of

<sup>3</sup> See A.R.S. 13-3601 in the Appendix for Arizona's definition of domestic violence.

sexual assault arrests and arrest counts flagged for domestic violence and the subsequent case information.

In CY 2008 and CY 2009, a total of 29 and 33 sexual assault arrests, respectively, were flagged for domestic violence. The 29 arrests in CY 2008 resulted in 39 counts of sexual assault that were also flagged for domestic violence. There were 53 sexual assault arrest counts flagged for domestic violence as a result of the 33 arrest events recorded in CY 2009 (Table 2).

<b>Table 2: Sexual Assault Arrests Flagged for Domestic Violence CY 2008-2009</b>		
	2008	2009
Sexual Assault Arrests Flagged for Domestic Violence	29	33
Sexual Assault Arrest Counts Flagged for Domestic Violence	39	53
Sexual Assault Arrest Counts Flagged for Domestic Violence Leading to Sexual Assault Conviction Charges	7	7

Of the 39 sexual assault arrest counts flagged for domestic violence from CY 2008, eight led to convictions. Seven of these convictions were for sexual assault and the other was for kidnapping. Eight of the 53 sexual assault counts flagged for domestic violence in CY 2009 resulted in a conviction. Seven convictions were for sexual assault and one was for child molestation (Table 2).

#### *Sexual Assault Offender Characteristics*

ACJC research staff also compiled data on the gender, race, and age of sexual assault arrestees in CY 2008 and CY 2009 (Table 3). All of the individuals arrested for sexual assault in CY 2008 were male, and almost all were male in CY 2009.

<b>Table 3: Characteristics of Individuals Arrested for Sexual Assault CY 2008-2009</b>		
	2008	2009
<i>Gender</i>		
Male	100.0%	99.4%
Female	0.0%	0.6%
<i>Race</i>		
White/Caucasian	80.0%	82.1%
Black	13.3%	10.7%
Asian/Pacific Islander	1.1%	0.6%
American Indian/ Alaskan Native	5.6%	5.8%
Unknown	0.0%	0.6%
<i>Median Age</i>	32	33
<b>Total Individuals Arrested</b>	<b>270</b>	<b>308</b>

The Federal Bureau of Investigation reporting guidelines require states to collect information on race that include White, Black, American Indian or Alaskan Native, Asian or Pacific Islander, and Unknown. Guidance is provided to states to record individuals of Latino ethnicity in the available racial category that best represents the arrestee. This is important to note when analyzing race data from the ACCH repository.

In CY 2008, 80 percent of individuals arrested for sexual assault were White (Table 3). Blacks made up 13.3 percent of arrested offenders, followed by American Indian/Alaskan Natives (5.6 percent), and Asian/Pacific Islanders (1.1 percent). Similarly, in CY 2009 Whites comprised more than four-fifths of arrested alleged offenders (82.1 percent). Blacks accounted for 10.7 percent of the arrestees, followed by American Indian/Alaskan Natives (5.8 percent), and Asian/Pacific Islanders (0.6 percent). An additional 0.6 percent of alleged sexual assault offenders arrested in CY 2009 had no race information entered in the ACCH repository.

### *Sexual Assault Dispositions, Convictions, and Sentencing*

In addition to arrest data, the ACCH repository provides case disposition information for each arrest count. The following sections summarize sexual assault conviction and sentencing data associated with the CY 2008 and CY 2009 arrests. Because both the CY 2008 and CY 2009 arrest and subsequent case information were extracted in January 2011, the disposition data associated with the CY 2008 arrests had an additional year to be processed and entered into the ACCH.

Of the arrest counts entered into ACCH in CY 2008, 381 contained sexual assault case disposition information. A total of 119 dispositions were for a sexual assault conviction, 145 dispositions were dismissed by the court, 109 dispositions were not filed or not referred to court, four of the dispositions resulted in an acquittal, and four dispositions resulted in pleas to other charges (Table 4). Four of the convictions were affirmed in appellate court. Of the 119 convictions, 116 originated from sexual assault arrest counts, while the others originated from arrest counts for assault, sexual abuse, and theft of means of transportation.

<b>Table 4: Sexual Assault Dispositions by Count CY 2008-2009</b>		
	2008*	2009
Submitted to DPS	381	469
Dismissed by the Court	145	220
Not Filed/Not Referred	109	76
Acquitted/Not Guilty	4	6
Resulting in Pleas to Other Charges	4	3
Resulting in a Conviction	119	164

\* 2008 data includes one count of sexual assault involving a spouse.

Of the arrest counts recorded in CY 2009, there were 469 dispositions for sexual assault. Of the 469 dispositions, 164 were for a conviction for sexual assault, 76 dispositions were not filed or

referred, 220 dispositions were for sexual assault counts dismissed by the court, six dispositions were for cases that resulted in acquittal, and three other dispositions were for cases that resulted in an offender pleading to other charges (Table 4). Of the 164 sexual assault convictions, 160 were a direct result of a sexual assault arrest count and the other four originated from arrest counts for kidnapping, sexual abuse, and sexual conduct with a minor.

When looking at the sentences associated with the sexual assault convictions from both CY 2008 and CY 2009, it is important to note that the sentencing categories are not mutually exclusive. In other words, the sentencing information contained in the ACCH may include multiple sanctions imposed upon one convicted offender. Approximately 89 percent of sexual assault convictions in CY 2008 resulted in a probation sentence, 51.3 percent of convictions resulted in a sentence to prison or jail, 50.4 percent resulted in a suspended sentence, 5.0 percent resulted in orders to pay a fine, 4.2 percent resulted in restitution, 2.5 percent of convictions resulted in a sentence of community service, and 30.3 percent resulted in "other" forms of sentencing. In CY 2009, roughly 68 percent of sexual assault convictions resulted in a probation sentence, 54.9 percent resulted in prison or jail time, 46.3 percent resulted in a suspended sentence, 15.9 percent of convictions led to a fine, 1.8 percent required the offender to provide restitution, and 17.1 percent received some "other" form of sentencing (Table 5).

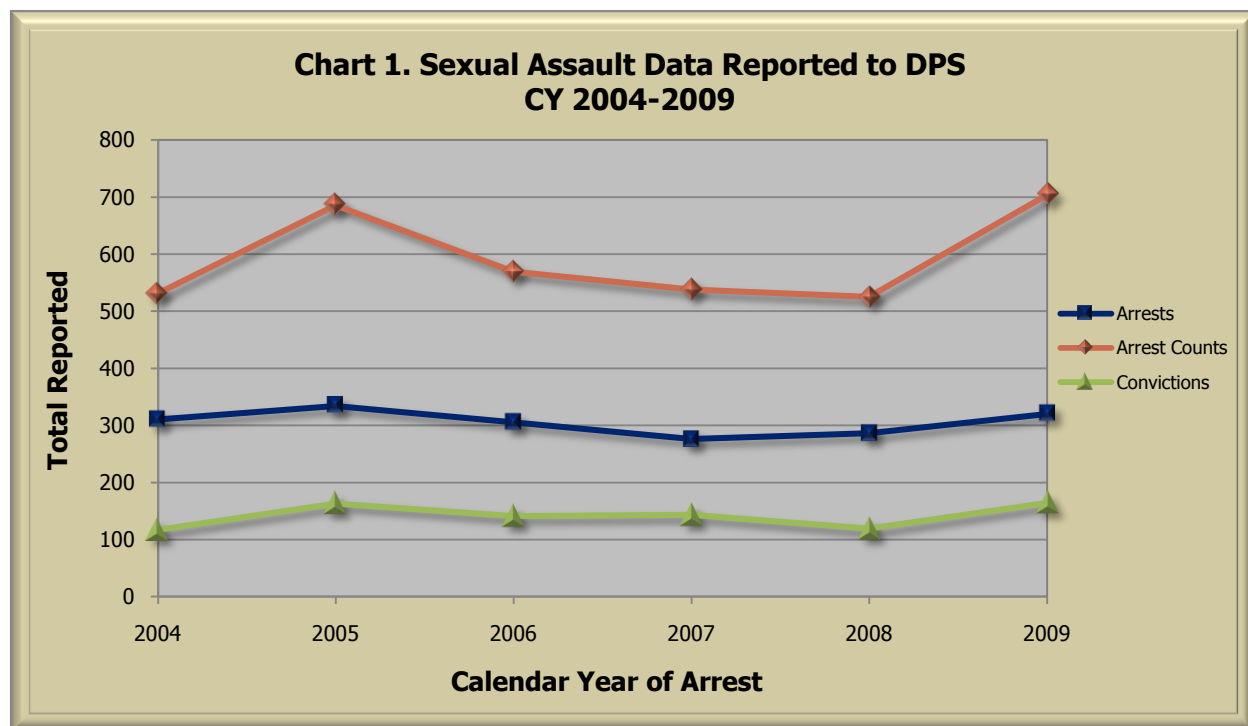
<b>Table 5: Percentage of Sexual Assault Convictions by Sentence Types CY 2008-2009</b>		
	2008	2009
Fines	5.0%	15.9%
Probation	89.1%	67.7%
Jail	4.2%	5.5%
Prison	47.1%	49.4%
Community Service	2.5%	0.0%
Restitution	4.2%	1.8%
Suspended Sentence	50.4%	46.3%
Other	30.3%	17.1%

## Trends in the Sexual Assault Data, CY 2004-2009

In addition to summarizing the CY 2009 data and updating the CY 2008 data, this report includes a six-year trend analysis of sexual assault arrest counts and dispositions. All sexual assault data reported in the trend analysis incorporates counts and dispositions of sexual assault involving a spouse. A.R.S. 13-1406.01, formerly known as the sexual assault involving a spouse statute code, was not repealed until the middle of 2005, and as a result, the CY 2004 and CY 2005 data contain arrest and disposition information for this offense. In addition, three arrest counts in CY 2007 and CY 2008 were recorded as A.R.S. 13-1406.01 offenses even though the statute was repealed.

### *Sexual Assault Arrests, Charges, and Convictions*

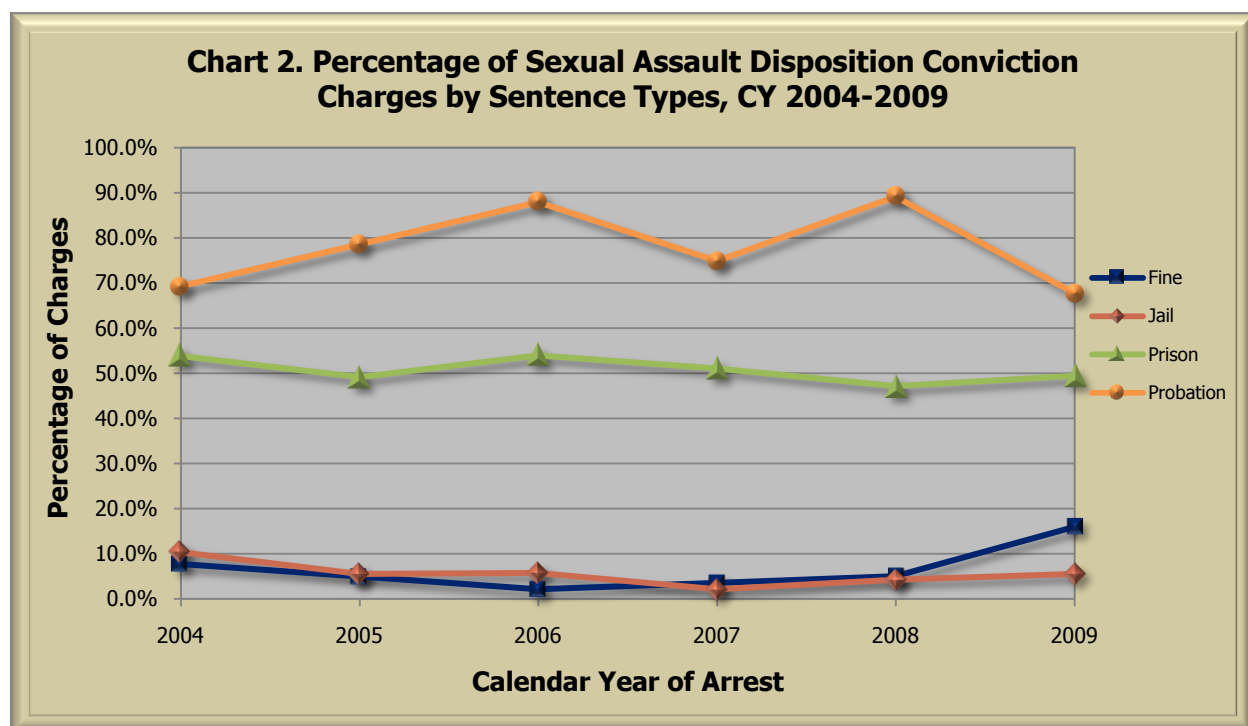
After a one-year increase in the number of sexual assault arrests, counts, and convictions from CY 2004 to CY 2005, all three decreased from CY 2005 to CY 2008 (Chart 1). In CY 2009, there was an increase in sexual assault arrests, arrest counts, and convictions. Arrest counts for sexual assault totaled 531 in CY 2004 and increased to 703 in CY 2009. The six-year trend in sexual assault arrests was more stable with 310 arrests recorded in CY 2004 and 320 reported in CY 2009. From CY 2004 to CY 2009, the number of sexual assault disposition counts leading to a conviction fluctuated from year-to-year, but increased over the six-year period. In CY 2004, there were a total of 117 sexual assault convictions for sexual assault compared to 164 recorded in CY 2009. Caution must be taken when comparing data year by year because arrests that occurred during earlier years have been given more time for the arrest and subsequent case information to be entered into the ACCH.



### Sexual Assault Sentencing

ACCH data contains information about eight different types of sentences. For the trend analysis, only the four most frequently used sentence types (fine, jail, prison, and probation) for sexual assault convictions are included in the analysis. Each conviction for sexual assault may include more than one sentence type.

Chart 2 shows the six-year trends for each of the four primary sentences resulting from the sexual assault convictions. In CY 2004, 69.2 percent of sexual assault convictions resulted in probation sentences, 53.8 percent of convictions led to prison sentences, 10.3 percent of convictions resulted in jail sentences, and 7.7 percent of convictions resulted in a fine. Over the six-year period, the percentage of sexual assault convictions that led to a probation sentence ranged from approximately 90 percent in 2008 to 67.7 percent in CY 2009. In contrast, prison sentences remained rather steady during the time period ending at 49.4 percent of convictions in CY 2009. Convicted sexual assault offenders were sentenced to jail in 5.5 percent of the CY 2009 convictions, and the percentage of convictions resulting in fines increased to 15.9 percent in CY2009.



## Discussion

Utilizing information gleaned from disposition reporting forms is a promising approach for understanding patterns of criminal offending and the performance of the criminal justice system. Unfortunately, not all of the information needed to meet the requirements of A.R.S. 41-2406.B were captured by the Arizona Computerized Criminal History (ACCH) repository housed at the Arizona Department of Public Safety. The repealing of A.R.S. 13-1406.01 hampered ACJC's ability to determine when a sexual assault involved a spouse, as required by A.R.S. 41-2406.B. Also, the relationship between victim and offender (i.e., strangers, friends, dating, married, estranged, etc.) is not a specific field on the arrest and disposition reporting forms. Although there is a field that allows law enforcement to indicate whether a crime involves domestic violence, A.R.S. 13-3601 outlines that a crime of domestic violence is not restricted to instances where the victim and offender are married and can include any of the following:

- The relationship between the victim and the defendant is one of marriage or former marriage or of persons residing or having resided in the same household;
- The victim and the defendant have a child in common;
- The victim or the defendant is pregnant by the other party;
- The victim is related to the defendant or the defendant's spouse by blood or court order as a parent, grandparent, child, grandchild, brother or sister, or by marriage as a parent-in-law, grandparent-in-law, stepparent, step-grandparent, stepchild, step-grandchild, brother-in-law or sister-in-law;
- The victim is a child who resides or has resided in the same household as the defendant and is related by blood to a former spouse of the defendant or to a person who resides or who has resided in the same household as the defendant; or
- The relationship between the victim and the defendant is currently or was previously a romantic or sexual relationship. Factors for consideration are the type and length of the relationship, the frequency of interaction, and the length of time since the relationship was terminated.

Nonetheless, sexual assaults flagged for domestic violence are analyzed in a separate section of this report. This analysis is included to further enhance the reader's understanding of sexual assault that occurs in the context of a domestic relationship.

Further complicating ACJC's ability to report all of the information required by A.R.S. 41-2406.B, specifically the information on false reporting of sexual assault involving a spouse, are the fingerprinting requirements, as described in A.R.S. 41-1750. A first charge of false reporting of sexual assault involving a spouse (A.R.S. 13-2907.03) is a class one misdemeanor and is not an offense type that requires fingerprinting and the submission of arrest and subsequent case information to ACCH. As of CY 2009, no arrest counts have been entered into the ACCH using the A.R.S. 13-2907.03 criminal code.

Finally, there is significant interest at the local, state, and federal level to improve the quality of information in criminal history record repositories. Ongoing efforts are being made in Arizona to improve the timeliness, completeness, and overall quality of the criminal history records available through the ACCH repository. Unfortunately, a total of 134 sexual assault arrest counts from CY 2008 were missing dispositions by January 2011, and a total of 219 sexual assault arrest counts from CY 2009 were also missing dispositions in the repository. Identifying

and capturing the arrest and subsequent case information that is known to be missing would improve the quality of ACCH data and our understanding of sexual assault processing by Arizona's criminal justice system.



## **APPENDIX**

### **13-1406. Sexual assault; classification; increased punishment**

A. A person commits sexual assault by intentionally or knowingly engaging in sexual intercourse or oral sexual contact with any person without consent of such person.

B. Sexual assault is a class 2 felony, and the person convicted shall be sentenced pursuant to this section and the person is not eligible for suspension of sentence, probation, pardon or release from confinement on any basis except as specifically authorized by section 31-233, subsection A or B until the sentence imposed by the court has been served or commuted. If the victim is under fifteen years of age, sexual assault is punishable pursuant to section 13-705. The presumptive term may be aggravated or mitigated within the range under this section pursuant to section 13-701, subsections C, D and E. If the sexual assault involved the intentional or knowing administration of flunitrazepam, gamma hydroxy butyrate or ketamine hydrochloride without the victim's knowledge, the presumptive, minimum and maximum sentence for the offense shall be increased by three years. The additional sentence imposed pursuant to this subsection is in addition to any enhanced sentence that may be applicable. The term for a first offense is as follows:

<u>Minimum</u>	<u>Presumptive</u>	<u>Maximum</u>
5.25 years	7 years	14 years

The term for a defendant who has one historical prior felony conviction is as follows:

<u>Minimum</u>	<u>Presumptive</u>	<u>Maximum</u>
7 years	10.5 years	21 years

The term for a defendant who has two or more historical prior felony convictions is as follows:

<u>Minimum</u>	<u>Presumptive</u>	<u>Maximum</u>
14 years	15.75 years	28 years

C. The sentence imposed on a person for a sexual assault shall be consecutive to any other sexual assault sentence imposed on the person at any time.

D. Notwithstanding section 13-703, section 13-704, section 13-705, section 13-706, subsection A and section 13-708, subsection D, if the sexual assault involved the intentional or knowing infliction of serious physical injury, the person may be sentenced to life imprisonment and is not eligible for suspension of sentence, probation, pardon or release from confinement on any basis except as specifically authorized by section 31-233, subsection A or B until at least twenty-five years have been served or the sentence is commuted. If the person was at least eighteen years of age and the victim was twelve years of age or younger, the person shall be sentenced pursuant to section 13-705.

### **13-2907.03. False reporting of sexual assault involving a spouse; classification**

A person who intentionally makes a false report of sexual assault involving a spouse knowing the report is false or a person who coerces another person to make a false report of sexual assault involving a spouse knowing the report is false is guilty of a class 1 misdemeanor.

**13-3601. Domestic violence; definition; classification; sentencing option; arrest and procedure for violation; weapon seizure**

A. "Domestic violence" means any act that is a dangerous crime against children as defined in section 13-705 or an offense prescribed in section 13-1102, 13-1103, 13-1104, 13-1105, 13-1201, 13-1202, 13-1203, 13-1204, 13-1302, 13-1303, 13-1304, 13-1406, 13-1502, 13-1503, 13-1504, 13-1602 or 13-2810, section 13-2904, subsection A, paragraph 1, 2, 3 or 6, section 13-2910, subsection A, paragraph 8 or 9, section 13-2915, subsection A, paragraph 3 or section 13-2916, 13-2921, 13-2921.01, 13-2923, 13-3019, 13-3601.02 or 13-3623, if any of the following applies:

1. The relationship between the victim and the defendant is one of marriage or former marriage or of persons residing or having resided in the same household.
2. The victim and the defendant have a child in common.
3. The victim or the defendant is pregnant by the other party.
4. The victim is related to the defendant or the defendant's spouse by blood or court order as a parent, grandparent, child, grandchild, brother or sister or by marriage as a parent-in-law, grandparent-in-law, stepparent, step-grandparent, stepchild, step-grandchild, brother-in-law or sister-in-law.
5. The victim is a child who resides or has resided in the same household as the defendant and is related by blood to a former spouse of the defendant or to a person who resides or who has resided in the same household as the defendant.
6. The relationship between the victim and the defendant is currently or was previously a romantic or sexual relationship. The following factors may be considered in determining whether the relationship between the victim and the defendant is currently or was previously a romantic or sexual relationship:
  - (a) The type of relationship.
  - (b) The length of the relationship.
  - (c) The frequency of the interaction between the victim and the defendant.
  - (d) If the relationship has terminated, the length of time since the termination.

B. A peace officer, with or without a warrant, may arrest a person if the officer has probable cause to believe that domestic violence has been committed and the officer has probable cause to believe that the person to be arrested has committed the offense, whether the offense is a felony or a misdemeanor and whether the offense was committed within or without the presence of the peace officer. In cases of domestic violence involving the infliction of physical injury or involving the discharge, use or threatening exhibition of a deadly weapon or dangerous instrument, the peace officer shall arrest a person, with or without a warrant, if the officer has probable cause to believe that the offense has been committed and the officer has

probable cause to believe that the person to be arrested has committed the offense, whether the offense was committed within or without the presence of the peace officer, unless the officer has reasonable grounds to believe that the circumstances at the time are such that the victim will be protected from further injury. Failure to make an arrest does not give rise to civil liability except pursuant to section 12-820.02. In order to arrest both parties, the peace officer shall have probable cause to believe that both parties independently have committed an act of domestic violence. An act of self-defense that is justified under chapter 4 of this title is not deemed to be an act of domestic violence. The release procedures available under section 13-3883, subsection A, paragraph 4 and section 13-3903 are not applicable to arrests made pursuant to this subsection.

C. A peace officer may question the persons who are present to determine if a firearm is present on the premises. On learning or observing that a firearm is present on the premises, the peace officer may temporarily seize the firearm if the firearm is in plain view or was found pursuant to a consent to search and if the officer reasonably believes that the firearm would expose the victim or another person in the household to a risk of serious bodily injury or death. A firearm that is owned or possessed by the victim shall not be seized unless there is probable cause to believe that both parties independently have committed an act of domestic violence.

D. If a firearm is seized pursuant to subsection C of this section, the peace officer shall give the owner or possessor of the firearm a receipt for each seized firearm. The receipt shall indicate the identification or serial number or other identifying characteristic of each seized firearm. Each seized firearm shall be held for at least seventy-two hours by the law enforcement agency that seized the firearm.

E. If a firearm is seized pursuant to subsection C of this section, the victim shall be notified by a peace officer before the firearm is released from temporary custody.

F. If there is reasonable cause to believe that returning a firearm to the owner or possessor may endanger the victim, the person who reported the assault or threat or another person in the household, the prosecutor shall file a notice of intent to retain the firearm in the appropriate superior, justice or municipal court. The prosecutor shall serve notice on the owner or possessor of the firearm by certified mail. The notice shall state that the firearm will be retained for not more than six months following the date of seizure. On receipt of the notice, the owner or possessor may request a hearing for the return of the firearm, to dispute the grounds for seizure or to request an earlier return date. The court shall hold the hearing within ten days after receiving the owner's or possessor's request for a hearing. At the hearing, unless the court determines that the return of the firearm may endanger the victim, the person who reported the assault or threat or another person in the household, the court shall order the return of the firearm to the owner or possessor.

G. A peace officer is not liable for any act or omission in the good faith exercise of the officer's duties under subsections C, D, E and F of this section.

H. Each indictment, information, complaint, summons or warrant that is issued and that involves domestic violence shall state that the offense involved domestic violence and shall be designated by the letters DV. A domestic violence charge shall not be dismissed or a domestic violence conviction shall not be set aside for failure to comply with this subsection.

I. A person who is arrested pursuant to subsection B of this section may be released from custody in accordance with the Arizona rules of criminal procedure or any other applicable statute. Any order for release, with or without an appearance bond, shall include pretrial release conditions that are necessary to provide for the protection of the alleged victim and other specifically designated persons and may provide for additional conditions that the court deems appropriate, including participation in any counseling programs available to the defendant.

J. When a peace officer responds to a call alleging that domestic violence has been or may be committed, the officer shall inform in writing any alleged or potential victim of the procedures and resources available for the protection of the victim including:

1. An order of protection pursuant to section 13-3602, an injunction pursuant to section 25-315 and an injunction against harassment pursuant to section 12-1809.
2. The emergency telephone number for the local police agency.
3. Telephone numbers for emergency services in the local community.

K. A peace officer is not civilly liable for noncompliance with subsection J of this section.

L. An offense that is included in domestic violence carries the classification prescribed in the section of this title in which the offense is classified. If the defendant committed a felony offense listed in subsection A of this section against a pregnant victim and knew that the victim was pregnant or if the defendant committed a felony offense causing physical injury to a pregnant victim and knew that the victim was pregnant, section 13-709.04, subsection B applies to the sentence imposed.

**41-1750. Central state repository; department of public safety; duties; funds; accounts; definitions**

A. The department is responsible for the effective operation of the central state repository in order to collect, store and disseminate complete and accurate Arizona criminal history records and related criminal justice information. The department shall:

1. Procure from all criminal justice agencies in this state accurate and complete personal identification data, fingerprints, charges, process control numbers and dispositions and such other information as may be pertinent to all persons who have been charged with, arrested for, convicted of or summoned to court as a criminal defendant for a felony offense or an offense involving domestic violence as defined in section 13-3601 or a violation of title 13, chapter 14 or title 28, chapter 4.
2. Collect information concerning the number and nature of offenses known to have been committed in this state and of the legal steps taken in connection with these offenses, such other information that is useful in the study of crime and in the administration of criminal justice and all other information deemed necessary to operate the statewide uniform crime reporting program and to cooperate with the federal government uniform crime reporting program.

3. Collect information concerning criminal offenses that manifest evidence of prejudice based on race, color, religion, national origin, sexual orientation, gender or disability.
  4. Cooperate with the central state repositories in other states and with the appropriate agency of the federal government in the exchange of information pertinent to violators of the law.
  5. Ensure the rapid exchange of information concerning the commission of crime and the detection of violators of the law among the criminal justice agencies of other states and of the federal government.
  6. Furnish assistance to peace officers throughout this state in crime scene investigation for the detection of latent fingerprints and in the comparison of latent fingerprints.
  7. Conduct periodic operational audits of the central state repository and of a representative sample of other agencies that contribute records to or receive criminal justice information from the central state repository or through the Arizona criminal justice information system.
  8. Establish and enforce the necessary physical and system safeguards to ensure that the criminal justice information maintained and disseminated by the central state repository or through the Arizona criminal justice information system is appropriately protected from unauthorized inquiry, modification, destruction or dissemination as required by this section.
  9. Aid and encourage coordination and cooperation among criminal justice agencies through the statewide and interstate exchange of criminal justice information.
  10. Provide training and proficiency testing on the use of criminal justice information to agencies receiving information from the central state repository or through the Arizona criminal justice information system.
  11. Operate and maintain the Arizona automated fingerprint identification system established pursuant to section 41-2411.
  12. Provide criminal history record information to the fingerprinting division for the purpose of screening applicants for fingerprint clearance cards.
- B. The director may establish guidelines for the submission and retention of criminal justice information as deemed useful for the study or prevention of crime and for the administration of criminal justice.
- C. The chief officers of criminal justice agencies of this state or its political subdivisions shall provide to the central state repository fingerprints and information concerning personal identification data, descriptions, crimes for which persons are arrested, process control numbers and dispositions and such other information as may be pertinent to all persons who have been charged with, arrested for, convicted of or summoned to court as criminal defendants for felony

offenses or offenses involving domestic violence as defined in section 13-3601 or violations of title 13, chapter 14 or title 28, chapter 4 that have occurred in this state.

D. The chief officers of law enforcement agencies of this state or its political subdivisions shall provide to the department such information as necessary to operate the statewide uniform crime reporting program and to cooperate with the federal government uniform crime reporting program.

E. The chief officers of criminal justice agencies of this state or its political subdivisions shall comply with the training and proficiency testing guidelines as required by the department to comply with the federal national crime information center mandates.

F. The chief officers of criminal justice agencies of this state or its political subdivisions also shall provide to the department information concerning crimes that manifest evidence of prejudice based on race, color, religion, national origin, sexual orientation, gender or disability.

G. The director shall authorize the exchange of criminal justice information between the central state repository, or through the Arizona criminal justice information system, whether directly or through any intermediary, only as follows:

1. With criminal justice agencies of the federal government, Indian tribes, this state or its political subdivisions and other states, on request by the chief officers of such agencies or their designated representatives, specifically for the purposes of the administration of criminal justice and for evaluating the fitness of current and prospective criminal justice employees.
2. With any noncriminal justice agency pursuant to a statute, ordinance or executive order that specifically authorizes the noncriminal justice agency to receive criminal history record information for the purpose of evaluating the fitness of current or prospective licensees, employees, contract employees or volunteers, on submission of the subject's fingerprints and the prescribed fee. Each statute, ordinance, or executive order that authorizes noncriminal justice agencies to receive criminal history record information for these purposes shall identify the specific categories of licensees, employees, contract employees or volunteers, and shall require that fingerprints of the specified individuals be submitted in conjunction with such requests for criminal history record information.
3. With the board of fingerprinting for the purpose of conducting good cause exceptions pursuant to section 41-619.55.
4. With any individual for any lawful purpose on submission of the subject of record's fingerprints and the prescribed fee.
5. With the governor, if the governor elects to become actively involved in the investigation of criminal activity or the administration of criminal justice in accordance with the governor's constitutional duty to ensure that the laws are faithfully executed or as needed to carry out the other responsibilities of the governor's office.

6. With regional computer centers that maintain authorized computer-to-computer interfaces with the department, that are criminal justice agencies or under the management control of a criminal justice agency and that are established by a statute, ordinance or executive order to provide automated data processing services to criminal justice agencies specifically for the purposes of the administration of criminal justice or evaluating the fitness of regional computer center employees who have access to the Arizona criminal justice information system and the national crime information center system.
7. With an individual who asserts a belief that criminal history record information relating to the individual is maintained by an agency or in an information system in this state that is subject to this section. On submission of fingerprints, the individual may review this information for the purpose of determining its accuracy and completeness by making application to the agency operating the system. Rules adopted under this section shall include provisions for administrative review and necessary correction of any inaccurate or incomplete information. The review and challenge process authorized by this paragraph is limited to criminal history record information.
8. With individuals and agencies pursuant to a specific agreement with a criminal justice agency to provide services required for the administration of criminal justice pursuant to that agreement if the agreement specifically authorizes access to data, limits the use of data to purposes for which given and ensures the security and confidentiality of the data consistent with this section.
9. With individuals and agencies for the express purpose of research, evaluative or statistical activities pursuant to an agreement with a criminal justice agency if the agreement specifically authorizes access to data, limits the use of data to research, evaluative or statistical purposes and ensures the confidentiality and security of the data consistent with this section.
10. With the auditor general for audit purposes.
11. With central state repositories of other states for noncriminal justice purposes for dissemination in accordance with the laws of those states.
12. On submission of the fingerprint card, with the department of economic security to provide criminal history record information on prospective adoptive parents for the purpose of conducting the preadoption certification investigation under title 8, chapter 1, article 1 if the department of economic security is conducting the investigation, or with an agency or a person appointed by the court, if the agency or person is conducting the investigation. Information received under this paragraph shall only be used for the purposes of the preadoption certification investigation.
13. With the department of economic security and the superior court for the purpose of evaluating the fitness of custodians or prospective custodians of juveniles, including parents, relatives and prospective guardians. Information received under this paragraph shall only be used for the purposes of that evaluation. The information shall be provided on submission of either:



(a) The fingerprint card.

(b) The name, date of birth and social security number of the person.

14. On submission of a fingerprint card, provide criminal history record information to the superior court for the purpose of evaluating the fitness of investigators appointed under section 14-5303 or 14-5407, or guardians appointed under section 14-5206.

15. With the supreme court to provide criminal history record information on prospective fiduciaries pursuant to section 14-5651.

16. With the department of juvenile corrections to provide criminal history record information pursuant to section 41-2814.

17. On submission of the fingerprint card, provide criminal history record information to the Arizona peace officer standards and training board or a board certified law enforcement academy to evaluate the fitness of prospective cadets.

18. With the internet sex offender web site database established pursuant to section 13-3827.

19. With licensees of the United States nuclear regulatory commission for the purpose of determining whether an individual should be granted unescorted access to the protected area of a commercial nuclear generating station on submission of the subject of record's fingerprints and the prescribed fee.

20. With the state board of education for the purpose of evaluating the fitness of a certificated teacher or administrator or an applicant for a teaching or an administrative certificate provided that the state board of education or its employees or agents have reasonable suspicion that the certificated person engaged in conduct that would be a criminal violation of the laws of this state or was involved in immoral or unprofessional conduct or that the applicant engaged in conduct that would warrant disciplinary action if the applicant were certificated at the time of the alleged conduct. The information shall be provided on the submission of either:

(a) The fingerprint card.

(b) The name, date of birth and social security number of the person.

21. With each school district and charter school in this state. The state board of education and the state board for charter schools shall provide the department of public safety with a current list of e-mail addresses for each school district and charter school in this state and shall periodically provide the department of public safety with updated e-mail addresses. If the department of public safety is notified that a person who is required to have a fingerprint clearance card to be employed by or to engage in volunteer activities at a school district or charter school has been arrested for or convicted of an offense listed in section 41-1758.03, subsection B or has been arrested for or convicted of an offense that amounts to unprofessional conduct under section 15-

550, the department of public safety shall notify each school district and charter school in this state that the person's fingerprint clearance card has been suspended or revoked.

22. With the child protective services division of the department of economic security as provided by law, which currently is the Adam Walsh child protection and safety act of 2006 (42 United States Code section 16961), for the purposes of investigating or responding to reports of child abuse, neglect or exploitation. Information received pursuant to this paragraph from the national crime information center, the interstate identification index and the Arizona criminal justice information system network shall only be used for the purposes of investigating or responding as prescribed in this paragraph. The information shall be provided on submission to the department of public safety of either:

(a) The fingerprints of the person being investigated.

(b) The name, date of birth and social security number of the person.

H. The director shall adopt rules necessary to execute this section.

I. The director, in the manner prescribed by law, shall remove and destroy records that the director determines are no longer of value in the detection or prevention of crime.

J. The director shall establish a fee in an amount necessary to cover the cost of federal noncriminal justice fingerprint processing for criminal history record information checks that are authorized by law for noncriminal justice employment, licensing or other lawful purposes. An additional fee may be charged by the department for state noncriminal justice fingerprint processing. Fees submitted to the department for state noncriminal justice fingerprint processing are not refundable.

K. The director shall establish a fee in an amount necessary to cover the cost of processing copies of department reports, eight by ten inch black and white photographs or eight by ten inch color photographs of traffic accident scenes.

L. Except as provided in subsection O of this section, each agency authorized by this section may charge a fee, in addition to any other fees prescribed by law, in an amount necessary to cover the cost of state and federal noncriminal justice fingerprint processing for criminal history record information checks that are authorized by law for noncriminal justice employment, licensing or other lawful purposes.

M. A fingerprint account within the records processing fund is established for the purpose of separately accounting for the collection and payment of fees for noncriminal justice fingerprint processing by the department. Monies collected for this purpose shall be credited to the account, and payments by the department to the United States for federal noncriminal justice fingerprint processing shall be charged against the account. Monies in the account not required for payment to the United States shall be used by the department in support of the department's noncriminal justice fingerprint processing duties. At the end of each fiscal year, any balance in the account not required for payment to the United States or to support the department's noncriminal justice fingerprint processing duties reverts to the state general fund.

N. A records processing fund is established for the purpose of separately accounting for the collection and payment of fees for department reports and photographs of traffic accident scenes processed by the department. Monies collected for this purpose shall be credited to the fund and shall be used by the department in support of functions related to providing copies of department reports and photographs. At the end of each fiscal year, any balance in the fund not required for support of the functions related to providing copies of department reports and photographs reverts to the state general fund.

O. The department of economic security may pay from appropriated monies the cost of federal fingerprint processing or federal criminal history record information checks that are authorized by law for employees and volunteers of the department, guardians pursuant to section 46-134, subsection A, paragraph 15, the licensing of foster parents or the certification of adoptive parents.

P. The director shall adopt rules that provide for:

1. The collection and disposition of fees pursuant to this section.
2. The refusal of service to those agencies that are delinquent in paying these fees.

Q. The director shall ensure that the following limitations are observed regarding dissemination of criminal justice information obtained from the central state repository or through the Arizona criminal justice information system:

1. Any criminal justice agency that obtains criminal justice information from the central state repository or through the Arizona criminal justice information system assumes responsibility for the security of the information and shall not secondarily disseminate this information to any individual or agency not authorized to receive this information directly from the central state repository or originating agency.
2. Dissemination to an authorized agency or individual may be accomplished by a criminal justice agency only if the dissemination is for criminal justice purposes in connection with the prescribed duties of the agency and not in violation of this section.
3. Criminal history record information disseminated to noncriminal justice agencies or to individuals shall be used only for the purposes for which it was given. Secondary dissemination is prohibited unless otherwise authorized by law.
4. The existence or nonexistence of criminal history record information shall not be confirmed to any individual or agency not authorized to receive the information itself.
5. Criminal history record information to be released for noncriminal justice purposes to agencies of other states shall only be released to the central state repositories of those states for dissemination in accordance with the laws of those states.
6. Criminal history record information shall be released to noncriminal justice agencies of the federal government pursuant to the terms of the federal security clearance information act (P.L. 99-169).

R. This section and the rules adopted under this section apply to all agencies and individuals collecting, storing or disseminating criminal justice information processed by manual or automated operations if the collection, storage or dissemination is funded in whole or in part with monies made available by the law enforcement assistance administration after July 1, 1973, pursuant to title I of the crime control act of 1973, and to all agencies that interact with or receive criminal justice information from or through the central state repository and through the Arizona criminal justice information system.

S. This section does not apply to criminal history record information contained in:

1. Posters, arrest warrants, announcements or lists for identifying or apprehending fugitives or wanted persons.
2. Original records of entry such as police blotters maintained by criminal justice agencies, compiled chronologically and required by law or long-standing custom to be made public if these records are organized on a chronological basis.
3. Transcripts or records of judicial proceedings if released by a court or legislative or administrative proceedings.
4. Announcements of executive clemency or pardon.
5. Computer databases, other than the Arizona criminal justice information system, that are specifically designed for community notification of an offender's presence in the community pursuant to section 13-3825 or for public informational purposes authorized by section 13-3827.

T. Nothing in this section prevents a criminal justice agency from disclosing to the public criminal history record information that is reasonably contemporaneous to the event for which an individual is currently within the criminal justice system, including information noted on traffic accident reports concerning citations, blood alcohol tests or arrests made in connection with the traffic accident being investigated.

U. In order to ensure that complete and accurate criminal history record information is maintained and disseminated by the central state repository:

1. The arresting authority shall take legible ten-print fingerprints of all persons who are arrested for offenses listed in subsection C of this section including persons who are arrested and released pursuant to section 13-3903, subsection C. The arresting authority may transfer an arrestee to a booking agency for ten-print fingerprinting. The arresting authority or booking agency shall obtain a process control number and provide to the person fingerprinted a document that indicates proof of the fingerprinting and that informs the person that the document must be presented to the court.
2. The mandatory fingerprint compliance form shall contain the following information:
  - (a) Whether ten-print fingerprints have been obtained from the person.

- (b) Whether a process control number was obtained.
  - (c) The offense or offenses for which the process control number was obtained.
  - (d) Any report number of the arresting authority.
  - (e) Instructions on reporting for ten-print fingerprinting, including available times and locations for reporting for ten-print fingerprinting.
  - (f) Instructions that direct the person to provide the form to the court at the person's next court appearance.
3. Within ten days after a person is fingerprinted, the arresting authority or agency that took the fingerprints shall forward the fingerprints to the department in the manner or form required by the department.
4. On the issuance of a summons for a defendant who is charged with an offense listed in subsection C of this section, the summons shall direct the defendant to provide ten-print fingerprints to the appropriate law enforcement agency.
5. At the initial appearance or on the arraignment of a summoned defendant who is charged with an offense listed in subsection C of this section, if the person does not present a completed mandatory fingerprint compliance form to the court or if the court has not received the process control number, the court shall order that within twenty calendar days the defendant be ten-print fingerprinted at a designated time and place by the appropriate law enforcement agency.
6. If the defendant fails to present a completed mandatory fingerprint compliance form or if the court has not received the process control number, the court, on its own motion, may remand the defendant into custody for ten-print fingerprinting. If otherwise eligible for release, the defendant shall be released from custody after being ten-print fingerprinted.
7. In every criminal case in which the defendant is incarcerated or fingerprinted as a result of the charge, an originating law enforcement agency or prosecutor, within forty days of the disposition, shall advise the central state repository of all dispositions concerning the termination of criminal proceedings against an individual arrested for an offense specified in subsection C of this section. This information shall be submitted on a form or in a manner required by the department.
8. Dispositions resulting from formal proceedings in a court having jurisdiction in a criminal action against an individual who is arrested for an offense specified in subsection C of this section or section 8-341, subsection V shall be reported to the central state repository within forty days of the date of the disposition. This information shall be submitted on a form or in a manner specified by rules approved by the supreme court.

9. The state department of corrections or the department of juvenile corrections, within forty days, shall advise the central state repository that it has assumed supervision of a person convicted of an offense specified in subsection C of this section or section 8-341, subsection V. The state department of corrections or the department of juvenile corrections shall also report dispositions that occur thereafter to the central state repository within forty days of the date of the dispositions. This information shall be submitted on a form or in a manner required by the department of public safety.

10. Each criminal justice agency shall query the central state repository before dissemination of any criminal history record information to ensure the completeness of the information. Inquiries shall be made before any dissemination except in those cases in which time is of the essence and the repository is technically incapable of responding within the necessary time period. If time is of the essence, the inquiry shall still be made and the response shall be provided as soon as possible.

V. The director shall adopt rules specifying that any agency that collects, stores or disseminates criminal justice information that is subject to this section shall establish effective security measures to protect the information from unauthorized access, disclosure, modification or dissemination. The rules shall include reasonable safeguards to protect the affected information systems from fire, flood, wind, theft, sabotage or other natural or man-made hazards or disasters.

W. The department shall make available to agencies that contribute to, or receive criminal justice information from, the central state repository or through the Arizona criminal justice information system a continuing training program in the proper methods for collecting, storing and disseminating information in compliance with this section.

X. Nothing in this section creates a cause of action or a right to bring an action including an action based on discrimination due to sexual orientation.

Y. For the purposes of this section:

1. "Administration of criminal justice" means performance of the detection, apprehension, detention, pretrial release, posttrial release, prosecution, adjudication, correctional supervision or rehabilitation of criminal offenders. Administration of criminal justice includes enforcement of criminal traffic offenses and civil traffic violations, including parking violations, when performed by a criminal justice agency. Administration of criminal justice also includes criminal identification activities and the collection, storage and dissemination of criminal history record information.

2. "Administrative records" means records that contain adequate and proper documentation of the organization, functions, policies, decisions, procedures and essential transactions of the agency and that are designed to furnish information to protect the rights of this state and of persons directly affected by the agency's activities.

3. "Arizona criminal justice information system" or "system" means the statewide information system managed by the director for the collection, processing, preservation, dissemination and exchange of criminal justice information and includes the electronic

equipment, facilities, procedures and agreements necessary to exchange this information.

4. "Central state repository" means the central location within the department for the collection, storage and dissemination of Arizona criminal history records and related criminal justice information.

5. "Criminal history record information" and "criminal history record" means information that is collected by criminal justice agencies on individuals and that consists of identifiable descriptions and notations of arrests, detentions, indictments and other formal criminal charges, and any disposition arising from those actions, sentencing, formal correctional supervisory action and release. Criminal history record information and criminal history record do not include identification information to the extent that the information does not indicate involvement of the individual in the criminal justice system or information relating to juveniles unless they have been adjudicated as adults.

6. "Criminal justice agency" means either:

(a) A court at any governmental level with criminal or equivalent jurisdiction, including courts of any foreign sovereignty duly recognized by the federal government.

(b) A government agency or subunit of a government agency that is specifically authorized to perform as its principal function the administration of criminal justice pursuant to a statute, ordinance or executive order and that allocates more than fifty per cent of its annual budget to the administration of criminal justice. This subdivision includes agencies of any foreign sovereignty duly recognized by the federal government.

7. "Criminal justice information" means information that is collected by criminal justice agencies and that is needed for the performance of their legally authorized and required functions, such as criminal history record information, citation information, stolen property information, traffic accident reports, wanted persons information and system network log searches. Criminal justice information does not include the administrative records of a criminal justice agency.

8. "Disposition" means information disclosing that a decision has been made not to bring criminal charges or that criminal proceedings have been concluded or information relating to sentencing, correctional supervision, release from correctional supervision, the outcome of an appellate review of criminal proceedings or executive clemency.

9. "Dissemination" means the written, oral or electronic communication or transfer of criminal justice information to individuals and agencies other than the criminal justice agency that maintains the information. Dissemination includes the act of confirming the existence or nonexistence of criminal justice information.

10. "Management control":

(a) Means the authority to set and enforce:

(i) Priorities regarding development and operation of criminal justice information systems and programs.

(ii) Standards for the selection, supervision and termination of personnel involved in the development of criminal justice information systems and programs and in the collection, maintenance, analysis and dissemination of criminal justice information.

(iii) Policies governing the operation of computers, circuits and telecommunications terminals used to process criminal justice information to the extent that the equipment is used to process, store or transmit criminal justice information.

(b) Includes the supervision of equipment, systems design, programming and operating procedures necessary for the development and implementation of automated criminal justice information systems.

11. "Process control number" means the Arizona automated fingerprint identification system number that attaches to each arrest event at the time of fingerprinting and that is assigned to the arrest fingerprint card, disposition form and other pertinent documents.

12. "Secondary dissemination" means the dissemination of criminal justice information from an individual or agency that originally obtained the information from the central state repository or through the Arizona criminal justice information system to another individual or agency.

13. "Sexual orientation" means consensual homosexuality or heterosexuality.

14. "Subject of record" means the person who is the primary subject of a criminal justice record.

#### **41-2406. Sexual assault records; reports**

A. The department of public safety shall provide a copy of each applicable disposition reporting form relating to sexual assaults pursuant to section 13-1406 and false reporting of sexual assault pursuant to section 13-2907.03 to the Arizona criminal justice commission.

B. The Arizona criminal justice commission shall maintain the following records regarding sexual assaults pursuant to section 13-1406 and false reporting of sexual assault pursuant to section 13-2907.03 that are submitted to the commission by the department of public safety:

1. The number of police reports that are filed.

2. The number of charges that are filed and what charges are filed.



3. The number of convictions that are obtained.

4. The sentences that are imposed for each conviction.

C. For the purposes of subsection A of this section, the records shall identify the total number of police reports, charges, convictions and sentences for all sexual assaults and the number of police reports, charges, convictions and sentences for those sexual assaults that involved a spouse. For those sexual assaults that involved a spouse, the report shall identify whether the victim and the victim's spouse were estranged. The records shall also identify the total number of police reports, charges, convictions and sentences for all false reports that relate to sexual assault of a spouse pursuant to section 13-2907.03.

D. The commission shall annually submit the report required by subsection B of this section to the governor, the president of the senate and the speaker of the house of representatives and shall provide a copy of this report to the secretary of state and the director of the Arizona state library, archives and public records. The commission may submit this report electronically.